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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MAX ENGLERIUS,)
11) CASE NO. C09-172 RSM
12 Plaintiff,)
13 v.) ORDER GRANTING DEFENDANT’S
14 UNITED STATES GOVERNMENT) MOTION TO DISMISS
15 Defendant.)
16

17 **I. INTRODUCTION**

18 This matter comes before the Court on Defendant’s Motion to Dismiss. (Dkt. #4).
19 Defendant argues that this Court lacks jurisdiction to entertain Plaintiff’s claims pursuant to
20 FRCP 12(b)(1). Defendant also indicates that Plaintiff’s claims are frivolous, as they are
21 similar to two previous meritless lawsuits filed by Plaintiff in this District Court that have
22 already been dismissed.

23 For the reasons set forth below, the Court GRANTS Defendant’s motion.

24 **II. DISCUSSION**

25 **A. Background**

26 Plaintiff Max Englerius, appearing *pro se*, filed the instant lawsuit on February 9, 2009.
27 In his 15-page complaint – which is preceded by a three-page “prologue” that criticizes the
28 concept of a three-branch system of government – Plaintiff accuses the United States

1 Government of several wrongdoings, and attacks the constitutionality of this country's voting
2 system. Plaintiff specifically seeks to have the 2008 presidential election invalidated as
3 "illegally contrived." (Pl.'s Compl. at 3). The basis for this request stems from his allegation
4 that the Federal Election Commission (the "Commission") permitted the major political
5 parties to manipulate the Presidential debates to exclude certain candidates.

6 The Commission now brings the instant motion to dismiss pursuant to FRCP 12(b)(1),
7 arguing that this Court lacks jurisdiction to entertain Plaintiff's claims. The Commission
8 indicates that Plaintiff has failed to follow the proper procedures set forth in the Federal
9 Election Campaign Act ("FECA"), 2 U.S.C. § 437c, *et seq.* These statutes establish the
10 authority of the Commission to oversee elections in this country, and also prescribe the
11 methods in which an individual can assert a complaint against any aspect of an election.
12 Rather than responding to the Commission's motion, Plaintiff filed two motions of his own,
13 including a motion to disregard the Commission's motion (Dkt. #5), and a motion for
14 summary judgment (Dkt. #6). The Court now turns to the substance of the Commission's
15 jurisdictional argument.

16 **B. FRCP 12(b)(1)**

17 A motion to dismiss under FRCP 12(b)(1) addresses the court's subject matter
18 jurisdiction. Federal courts are courts of limited jurisdiction, and they possess only that
19 power authorized by United States Constitution and statute, which is not to be expanded by
20 judicial decree. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). When
21 considering a motion to dismiss pursuant to FRCP 12(b)(1), the Court is not restricted to the
22 face of the pleadings, but may review any evidence, such as affidavits and testimony, to
23 resolve factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*,
24 850 F.2d 558, 560 (9th Cir. 1988).

25 In the instant case, it is unequivocally clear that the Court lacks subject matter
26 jurisdiction to entertain any challenge by Plaintiff against the United States' voting system.
27 Under 2 U.S.C. § 437g(a)(1), an individual with a complaint against the Commission must
28 first file an administrative complaint with the Commission. If such a complaint is dismissed

1 by the Commission, or the Commission otherwise fails to respond within 120 days after the
2 complaint is filed, the complainant may seek judicial review of this action. 2 U.S.C. §
3 437g(a)(8)(A)-(B). This complaint must be filed only in the United States District Court for
4 the District of Columbia within 60 days after the date of the dismissal. *Id.*

5 Here, Plaintiff filed an administrative complaint in accordance with 2 U.S.C. §
6 437g(a)(1). The Commission thereafter dismissed his complaint, and the Commission further
7 indicates that Plaintiff did not file an appeal within the 60 day window provided by FECA.
8 Plaintiff does not dispute these contentions. Plaintiff did not file his claim in the United
9 States District Court for the District of Columbia, therefore Plaintiff's claims should be
10 dismissed.

11 Nevertheless, Plaintiff argues in his response that this case does not implicate the
12 Commission. Rather, Plaintiff contends that this claim is "a civil rights case questioning
13 whether the Constitution prescribes that vested interests could form private parties to seize
14 control and monopolize government offices, by excluding others to benefit themselves."
15 (Dkt. #5 at 1). Plaintiff further indicates that the Commission is not a named-party in his
16 case, and therefore he argues that the Commission cannot bring the instant motion to dismiss.

17 Plaintiff's claims are clearly an attack on the Congressionally-mandated power given to
18 the Commission under FECA to oversee and enforce elections in this country. Therefore his
19 claims are within the rubric of 2 U.S.C. § 437g, irrespective of how he construes his
20 complaint, or the entities he chooses to name in his lawsuit. Given that he has not followed
21 the requirements set forth in this statute, it is clear that the Court lacks subject matter
22 jurisdiction to entertain Plaintiff's complaint under FRCP 12(b)(1). Furthermore, because this
23 Court lacks jurisdiction, Plaintiff's subsequent motions shall be stricken as moot.

24 **C. Plaintiff's Conduct**

25 As the Commission points out, Plaintiff's instant lawsuit is the most recent iteration of
26 two previous meritless cases dismissed by this District Court. *See Englerius v. United States*
27 *Government, et al.*, C00-29097 RSL; *Englerius v. United States Government, et al.*, C05-1515
28 MJP. Those complaints also sought to attack the Commission's oversight of previous

1 Presidential debates. Both cases were dismissed by this District Court and summarily
2 affirmed by the Ninth Circuit. (*See* Dkt. #4, Exs. 4 and 7).

3 With this background in mind, the Court finds it worthwhile to advise Plaintiff that
4 while he has a fundamental right to access the courts, “[f]rivolous and harassing claims crowd
5 out legitimate ones and need not be tolerated by the district courts.” *O’Loughlin v. Doe*, 920
6 F.2d 614, 618 (9th Cir. 1990). Accordingly, courts have “the inherent power to enter pre-
7 filing orders against vexatious litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047,
8 1057 (9th Cir. 2007) (citation omitted); *see also De Long v. Hennessey*, 912 F.2d 1144, 1147
9 (9th Cir. 1990) (“Under the power of 28 U.S.C. § 1651(a) . . . enjoining litigants with abusive
10 and lengthy histories is one such form of restriction that the district court may take.”).

11 Although this power is seldom used, courts “bear an affirmative obligation to ensure that
12 judicial resources are not needlessly squandered on repeated attempts by litigants to misuse
13 the courts.” *O’Loughlin*, 920 F.2d at 618. The Court does not find it necessary to use this
14 power in the instant case, but the Court notifies Plaintiff that his conduct is subject to these
15 well-established rules in the future.

16 The Court also finds it worthwhile to inform Plaintiff that the language he employs
17 within his pleadings violate the General Rules of this Court. Local Rule GR 8 provides:

18 Litigation, inside and outside the courtroom in the United States District Court for the
19 Western District of Washington, must be free from prejudice and bias in any form. Fair
20 and equal treatment must be accorded all courtroom participants, whether judges,
21 attorneys, witnesses, litigants, or court personnel. *The duty to be respectful of others*
22 *includes the responsibility to avoid comment or behavior that can reasonably be*
interpreted as manifesting prejudice or bias toward another on the basis of categories
such as gender, race, ethnicity, religion, disability, age, or sexual orientation.

23 Local Rule GR 8 (emphasis added).

24 Here, Plaintiff makes several racist remarks in his pleadings, aimed both at the
25 President of this country, as well as African-Americans as a whole. Such conduct and
26 language has no place in this Court and will not be tolerated.

1 **III. CONCLUSION**

2 Having reviewed the relevant pleadings, and the remainder of the record, the Court
3 hereby finds and ORDERS:

4 (1) Defendant's Motion to Dismiss (Dkt. #4) is GRANTED. All other motions are
5 STRICKEN AS MOOT. The case is now CLOSED.

6 (2) The Clerk is directed to forward a copy of this Order to all counsel of record and to
7 *pro se* Plaintiff at the following address: 1400 S. Thistle St, Seattle, WA 98108.

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9 DATED this 15th day of May, 2009.

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12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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